



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]

DECISION

MDD/141867

PRELIMINARY RECITALS

Pursuant to a petition filed May 08, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on August 06, 2012, at Kenosha, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has authority to make a determination the merits of Petitioner's Medicaid disability based application where there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: No Appearance, submission of Petitioner's medical file

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County.
2. Petitioner applied for Medicaid alleging disability on or about February 3, 2012. The application was forwarded to the Disability Determination Bureau (DDB). The DDB found that Petitioner was not disabled as the Medicaid program uses that term. The DDB so notified the Petitioner via letter dated March 30, 2012. Petitioner sought reconsideration, but the DDB affirmed its original determination.

3. The Petitioner has applied for Social Security benefits. He was denied those benefits on or about March 28, 2012. The medical conditions noted in the Medicaid and the Social Security applications are the same.
4. The undersigned did, with Petitioner's permission, contact the DDB after this hearing to see if any additional medical information had been obtained. The undersigned was informed that Petitioner never requested a reconsideration of the Social Security denial so no new medical information was obtained and that the March 28, 2012 Social Security denial remains in place.

DISCUSSION

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4.* Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the MA application is binding on a State Medicaid (MA) agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, and
 - (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

42 CFR 435.541(c)(4)(emphasis added).

Here Petitioner has applied for Social Security Administration (SSA) benefits and has been denied those benefits. Petitioner's Medicaid application is within 12 months of the most recent SSA denial. At the hearing for this case Petitioner did indicate that his condition has changed or deteriorated and that he has another surgery that should be done sometime in the fall of 2012. It was suggested that, if he is not done so already, that he request reconsideration of Social Security denial. I waited for a period of time after this hearing and contacted the DDB see if the Social Security reconsideration had been requested. If it had been requested, additional medical information might have been submitted that could impact these denials. There was, however, no request for reconsideration of the Social Security denial; thus no development of additional medical evidence. Given the Code of Federal Regulations provision cited above, the Division of Hearings and Appeals does not have the authority to make a finding as to the Petitioner's disability; rather it is bound by the Social Security determination. Petitioner is encouraged to contact the Social Security Administration regarding reconsideration or new application.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have the authority to make a determination the merits of Petitioner's Medicaid disability based application where there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

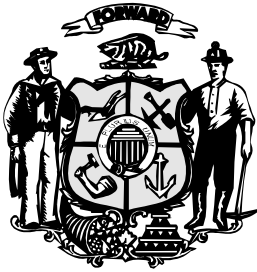
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of September, 2012

David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

c: Kenosha County Human Service Department - email
Department of Health Services - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 25, 2012.

Kenosha County Human Service Department
Disability Determination Bureau